

## **The complaint**

Mrs L complains that Usay Business Limited mis-sold her personal private medical insurance policies.

## **What happened**

The background to this complaint is well-known to both parties. So I've set out a summary of what I think are the key events.

In November 2019, Mrs L spoke with Usay's adviser. She explained that she had private medical insurance with a company I'll call S and that she'd been insured prior to that with a company I'll call V. She told the adviser that S' premiums had gone up.

During the call, Usay's adviser asked Mrs L questions about her existing cover. Mrs L indicated that she'd been insured on 'switch' terms with S and had had private medical insurance cover for many years. She also discussed the fact that she had had hypertension and high blood pressure for a few years.

Based on what Mrs L had said, the adviser recommended that she should take out a policy with an insurer I'll call A, on switch terms. This meant that the cover she'd held with S (and priorly V) would continue on the same terms with A. Mrs L accepted the adviser's recommendation and agreed to take out the policy with A. The new policy charged lower premiums than the price set out in S' renewal quote.

Mrs L was asked to send in a policy certificate which showed the level of cover she held with S. Unfortunately, it appears that Mrs L sent in her husband's policy certificate. This wasn't picked up by Usay, which sent on the certificate to A. However, A didn't notice the error either and the policy was set-up accordingly. Had the error been noticed, Usay would've been in a position to note that Mrs L hadn't taken out continuing cover with S previously when she'd moved from V to S. Instead, she'd begun a new moratorium with it. She'd opted to add on hypertension cover as additional extra. But under the new policy with A, Mrs L no longer had hypertension cover in place.

In November 2020, Usay recommended that Mrs L should move her policy with A back to V – again on switch terms. This was intended to protect her existing medical cover. Mrs L accepted the recommendation and a new policy began.

Unfortunately, Mrs L needed to make a claim on the policy with V for hypertension, which was turned down, due to the moratorium terms. And it was at this point that Mrs L realised

that the wrong policy certificate had been sent to A at the outset. Therefore, she realised that she didn't have hypertension cover either with V or priorly with A.

So Mrs L complained to Usay, because she felt that it had recommended she take out worse cover than she'd held with S. She was also unhappy because she said it ought to have noticed that she'd sent in the wrong policy certificate. She stated she'd told Usay that she had hypertension and high cholesterol and that she'd been told she had cover in place. She

said if she'd known she wouldn't have cover for hypertension on either the policy with A or V, she'd have remained with S.

Usay didn't agree that the policies had been mis-sold to Mrs L. It said it had no reason to know that she held separate cover for hypertension with S, as its advisers had understood she'd had continuing private medical insurance for many years. So it felt its recommendations had been suitable, based on the information the advisers had had. It acknowledged that it hadn't picked-up that Mrs L had sent in the wrong policy certificate, but it said that as A was ultimately responsible for the underwriting of the policy, it didn't think it was responsible for the error.

Mrs L asked us to look into her complaint.

Our investigator didn't think Mrs L's complaint should be upheld. She didn't think either of the advisers ought to have been put on notice that Mrs L had taken out a new moratorium with S, or that she'd had add-on hypertension cover. And she felt that, ultimately, A was responsible for not noticing the error with the policy documentation.

I issued a provisional decision on 22 May 2023. In my provisional decision, I explained the reasons why I intended to partly uphold Mrs L's complaint. I said:

*'The sale of the policies*

*It's common ground that Usay advised Mrs L to take out the policy with A in 2019 and the policy with V in 2020. This means it needed to carry out an assessment of her demands and needs and to make suitable recommendations based on the information it was given. So I've first considered whether I think it met its obligations on this point.*

*I've listened to the calls between Mrs L and Usay's advisers. During the 2019 calls, Mrs L consistently told the adviser that she'd held private medical insurance for some years. She stated that her policy with S had been taken out on a 'switch' basis, which meant that her policy was taken out on the same medical terms as her old policy with V. Mrs L did discuss her medical conditions and medications with the adviser and explained she'd had the conditions for four to five years.*

*As Mrs L told Usay that she'd had cover for a number of years and that that cover had moved from V to S on a 'switch' basis, I don't think it was unreasonable for it to conclude that Mrs L's conditions were likely covered under her existing terms by V and S. And so I don't think it was unfair for the advisers to have recommended a new switch policy to A or V, because that would mean her medical cover would remain the same with both insurers. I don't think either adviser was given any information which ought reasonably to have put them on notice either that the policy with S had, in fact, been set-up as a new moratorium rather than a switch, or that Mrs L had taken out add-on hypertension cover with S. This means I don't think they'd have had reason to have known that Mrs L's conditions wouldn't be covered under her new policies.*

*It seems to me, having listened to the calls, that the main reason Mrs L sought to move her policy from S to A (and then from A to V) was to bring down the policy price. The recommendations the advisers made to Mrs L appear to have met this objective, And it appears that information was sent to Mrs L about the way the policies worked promptly and in good time.*

*On that basis then, I don't think I could fairly find that Usay's advisers could have known, during the sales calls, that Mrs L didn't have continuing medical cover with S, nor that she'd purchased add-on hypertension cover with it. So I don't currently think I could reasonably*

*conclude that Usay gave Mrs L unsuitable advice to take switch her policies, first to A and then to V.*

*During the 2019 sale, Usay's adviser asked Mrs L to send a copy of her policy documentation relating to the contract she held with S. They made it clear that Mrs L didn't need to provide her husband's policy documents. I appreciate Mrs L says she sent in a copy of her own certificate, along with a copy of her husband's. However, Usay's records do indicate that it only received the documentation which related to Mrs L's husband. So it's possible that Mrs L's own certificate wasn't received by Usay and that it therefore wasn't in a position to send this on to A.*

*Nonetheless, in my view, the policy certificate Usay did receive clearly related to Mrs L's husband. And I think this ought to have been clear to whoever processed the document and sent it on to A. Instead, Usay's adviser told Mrs L that her policy documents had been received and said, "What we've got is perfect." They followed up later by telling Mrs L that she'd sent through 'all the right stuff.'*

*I agree that the ultimate underwriting decision was down to A and it's clear that it didn't notice the paperwork error. So it wouldn't be fair to hold Usay entirely responsible for the outcome of the failure to identify that Mrs L's policy was set-up in the absence of her own information. However, it seems to me that had Usay identified that Mrs L had sent in her husband's certificate, she would've had an opportunity to provide her own certificate (potentially for the second time). And if this had happened, I think Usay could and would've been put on notice not just that Mrs L had in fact taken a new moratorium with S, but also that she had add-on hypertension cover. This would've potentially made the existing recommendation wrong for Mrs L and so Usay could have been in a position to explore further options with her. Instead this didn't happen and Mrs L took out policies which ultimately provided her with less cover than she'd had before. I think too that it was reasonable for Mrs L to rely on the adviser's confirmation that Usay had the information it needed to set-up a switch policy with A and that everything was in order.*

*So I now need to think about a fair way for Usay to put things right. Mrs L has told us that if she'd known that she had a new moratorium policy and that neither A nor V could offer her hypertension cover, she'd have stayed with S. This indicates that she wouldn't have taken out either policy through Usay. However, on the specific facts of this case, I don't think it would be fair for me to direct Usay to refund the premiums Mrs L paid for the policies with A and V. I say that because by Mrs L's account, she'd have remained with S – which charged a higher premium than she paid for the cover with A and V. This means that she didn't lose out financially though the payment of premiums to A and V which were lower than she'd otherwise have paid if she'd stayed with S. So I don't think she's paid more for less cover – instead, she hasn't made a financial loss in respect of the premiums she paid.*

*Mrs L tells us too that she decided against private treatment for hypertension and instead, is undergoing treatment on the NHS, So I don't think she's shown she's actually incurred any medical costs which would have otherwise been covered by the policy with S. I appreciate Mrs L would like me to ensure that she's provided with hypertension cover in the future, but this isn't something I'm able to award here. That's because Usay isn't an underwriter and it can't offer private medical insurance itself. Neither can Usay tell an insurer to provide specific cover which the insurer may have chosen to exclude.*

*In my view, Mrs L has been caused clear material distress and inconvenience by Usay's failure to fully check her policy documentation and to let her know that she'd provided the wrong information. I think this mistake contributed to the overall underwriting errors which were made. I don't doubt how upsetting it was for Mrs L when she learned that she didn't have the cover she thought she'd had and that she was unlikely to be able to source such*

*cover in the future. If Usay had fully checked the documentation, I think this error may well have been avoided. So I currently think it would be fair and reasonable for Usay to pay Mrs L £300 to reflect the trouble and upset I think its administrative error is likely to have caused her.'*

I asked both parties to send me any further evidence or comments they wanted me to consider.

Usay accepted my provisional findings.

Mrs L did not and I've summarised her response. She felt I'd overlooked important information. She said the policy she'd previously held with V was a company policy and when she'd retired, she'd taken out a new policy with S. This hadn't been a switch. Usay had cold-called her with a sales pitch, offering a better policy than she'd held with S at the same price. She wasn't considering reducing her premiums.

Usay asked her to send her policy schedule to continue moratorium cover on the new policy. She insists that she sent both her own schedule and her husband's schedule to it. Usay had a duty of care to check the information it sent to A – had Usay checked any of the information, it would've realised she had cover for hypertension with Saga. And Usay had sent on the schedule to A. She felt that the policy has to have been mis-sold because the policy wasn't set up with her details. There was no indication on the policy schedule that hypertension was an additional add-on with S, so it hadn't been unreasonable for Mrs L to conclude that hypertension would also be included in the policy with A.

Mrs L referred to Usay's adviser specifically mentioning that she Mrs L had hypertension and high cholesterol, so she considered that they must have been reading from Mrs L's documents. She felt that Usay's mistakes had taken away her medical choices for the rest of her life, as it was almost impossible to take out cover for hypertension. Mrs L considered that given the size of Usay's business, she was sure that it would know of an underwriter which could provide cover for hypertension and that it could pay for it.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, whilst I'm sorry to disappoint Mrs L, I still find the fair and reasonable outcome to this complaint is for Usay to pay her compensation of £300 and I'll explain why.

I've carefully considered all that Mrs L has said and sent me. Within this final decision though, I haven't commented on each point she's made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

It's clear Mrs L feels strongly that Usay's advisers wrongly recommended that she take out a switch policy with A. But it still seems to me that based on the information Usay's adviser was given at the outset, it was reasonable for them to have understood that Mrs L had had cover for her existing medical conditions for some years. And I also think it was fair for the adviser to have concluded that cover for those conditions had been included on the policy with S, because they'd understood that Mrs L's policy had moved from V to S on a switch basis. If that had been the case, then by setting up a new policy with A on a switch basis, Mrs L would've continued to be insured for any existing conditions under the terms of the new policy. I simply don't think the advisers were given any information during the sale of either policy to indicate that Mrs L had taken out add-on cover for hypertension with S, which wouldn't be included as part of the switch to A, or that she'd taken out a new moratorium

with S, rather than continuation cover.

Mrs L maintains that she sent copies of both her own and her husband's policy schedules to Usay for onward forward to A. As I've said in my provisional decision, I accept it's possible that Mrs L *did* send both certificates to Usay. However, Usay's records show that it only received Mrs L's husband's certificate. I'm satisfied therefore that it most likely didn't receive a copy of Mrs L's own certificate.

As I set out in my provisional findings, in my view, the information set out on Mrs L's husband's policy certificate was clear enough that it ought to have put Usay on notice that the details on it didn't relate to Mrs L. And I remain persuaded that had it picked-up on the fact that the policy certificate didn't relate to Mrs L's own existing policy, then it's likely Mrs L would've been given an opportunity to (re)send a copy of her own certificate. Had this happened, I still find it's likely that Usay's advisers would've been put on notice that Mrs L had add-on hypertension cover, that their recommendation might no longer have been suitable for her and have given her a chance to explore other options. I remain satisfied that this error is likely to have caused Mrs L material distress and inconvenience, for which fair compensation should be paid.

However, it also remains the case that, ultimately, Usay wasn't the policy underwriter and that it wasn't responsible for the underwriting of and set-up of the policy. This was down to A. And I can't fairly or reasonably hold Usay responsible for any errors A may have made. Nor do I think I could reasonably direct Usay to source and pay for Mrs L to obtain hypertension cover.

I do sympathise with Mrs L's position, as I appreciate she no longer has private medical insurance for hypertension. But overall, it still seems Mrs L hasn't suffered an actual financial loss because of Usay's error, as both policies were cheaper than her policy with S. And neither has Mrs L incurred any private medical insurance costs for hypertension treatment. So I still find that on the facts of this complaint, the fair way for Usay to put right its mistake is to pay Mrs L £300 for the trouble and upset its error caused her. I was pleased to note that Usay accepted my provisional finding on this point.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I partly uphold this complaint.

I direct Usay Business Limited to pay Mrs L £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 17 July 2023.

Lisa Barham  
**Ombudsman**